In view of the conduct of the third respondent and the discrepancies in his statements, the learned president was justified in not attaching any value to his confession.

There is no substantial evidence apart from the confession against the third respondent.

In the result the appeal is dismissed.

Appeal dismissed.

Solicitors: *S. Seenivasagam & Sons; Joseph & Son; W. H. Tan & George.*

MENON v. THE BROOKLANDS (SELANGOR) RUBBER CO. LTD.

[O.C.J. (Raja Azlan Shah J.) July 18, 1967]
[K.L. — Civil Suit No. 699 of 1967]

Master and Servant — Wrongful dismissal — Estate conductor — Disobeying lawful and reasonable orders — Summary dismissal of estate conductor — Whether justified.

The plaintiff claimed damages for wrongful dismissal. The plaintiff was employed by the defendants as an estate conductcor in division II of the estate since 1960. For the first five days of 1965 there were discrepancies between the net weights of latex from his division of the estate and the weights at the main factory. This would clearly reflect upon the way he was performing his duty as conductor.

The manager of the estate wrote a letter on January 6, 1965 after pointing out the shortcomings of his work, warned him against further carelessness and negligence. The plaintiff refused to acknowledge receipt of it on a copy. This refusal was reported to the manager, who directed the assistant manager to write the plaintiff a letter instructing him to see the manager personally at an appointed time. This was duly done but the plaintiff did not comply. Two more requests were made to him to see the manager before the plaintiff complied with the manager's wish to see him.

At the interview the plaintiff being shown the warning letter again refused to sign the copy when requested. The manager therefore, suspended him from his duties on that same day January 7, 1965.

There were protracted negotiations between the plaintiff's solicitors and the defendants, and later between the plaintiff's union and the defendants. On April 21, 1965 the defendants served the plaintiff with a written notice of dismissal for insubordination with effect from January 8, 1965. The manager in his evidence said that he considered the incidents of January 6, 1965 and January 7, 1965 sufficient to render the plaintiff guilty of misconduct in his employment in that he disobeyed the lawful and reasonable orders of the defendants.

Upon the pleadings two material contentions were raised on behalf of the plaintiff: (a) whether the facts justify summary dismissal; (b) if not was there proper notice for such dismissal.

Held: the refusal to acknowledge receipt of warning letter justified instant dismissal since it goes to the essential conditions of his contract of service which required that he be a diligent and responsible estate conductor. The conduct was inconsistent with his duty towards the master. It was inconsistent with the continued confidence between them essential to the relationship of master and servant. Summary dismissal being justified the question of proper notice was not called for.

Cases referred to:—

(1) *Laws* v. *London Chronicle (Indicator Newspaper) Ltd.* [1959] 2 All E.R. 285, 287, 288.

(2) *Sinclair* v. *Neighbour* [1967] 2 W.L.R. 1.

(3) *Boston Deep Sea Fishing & Ice Co.* v. *Ansell* (1888), 39 Ch. D. 339, 363, C.A.

(4) *Ridge* v. *Baldwin* [1963] 2 All E.R. 66, 71.

(5) *Savage* v. *British India Steam Navigation Co. Ltd.* 46 T.L.R. 295.

CIVIL SUIT.

Dato' S. P. Seenivasagam for the plaintiff.

R. Khoo for the defendants.

Cur. Adv. Vult.

Raja Azlan Shah J.: The plaintiff claims damages against the defendants for wrongful dismissal. He contends that the dismissal without sufficient reason and without proper notice is wrongful and actionable. The ground of dismissal which is alleged against him in the pleading is misconduct, which in the particulars enumerated in paragraph 4 thereof consisted of wilful disobedience to the lawful and reasonable orders of the defendants in the course of employment and insolence to the defendants' assistant manager in the course of the said employment. Upon the pleadings which I have stated two material contentions were raised on behalf of the plaintiff. Whether the facts justify summary dismissal; if not, was there proper notice for such dismissal.

It is well-established law that wilful disobedience of a lawful and reasonable order of the employer will justify summary dismissal. It is also axiomatic that one act of disobedience or misconduct can justify instant dismissal if it is of a nature which goes to show that the servant is repudiating the contract or one of its essential conditions: see *Laws* v. *London Chronicle (Indicator Newspapers) Ltd.*(1) This point was re-stated in the recent case of *Sinclair* v. *Neighbour.*(2) In that case the manager of a betting-shop, responsible for the conduct of the shop and the employees there, quite deliberately took money out of the till for his own personal purposes in circumstances which he knew quite well his employer, if asked, would not permit. He replaced the money on the following day. The employer, on hearing of what had happened, dismissed him summarily. The Court of Appeal, in reversing the decision of the trial judge, held that the facts justified summary dismissal. Davies L.J. at page 5 of the judgment said:—

"With the greatest respect to the judge, I think that he fell into error in attaching too much weight to the label and not enough to the facts. The facts were established. The fact that the manager took the money from his employer's till behind his back knowing that the employer would not consent was established; and it seems to me that it does not really matter very much whether that justifies the label 'dishonest' or not. The judge ought to have gone on to consider whether even if falling short of dishonesty the manager's conduct was

nevertheless conduct of such a grave and weighty character as to amount to a breach of the confidential relationship between master and servant, such as would render the servant unfit for continuance in the master's employment and give the master the right to discharge him immediately".

Sachs L.J. paraphrased the matter in the following way:—

"It is well-established law that a servant can be instantly dismissed when his conduct is such that it not only amounts to a wrongful act inconsistent with his duty towards his master but is also inconsistent with the continuance of confidence between them. That was said by Brown L.J, in his classic judgment in *Boston Deep Sea Fishing and Ice Co.* v. *Ansell*".(3)

The fact that the master has not heard the servant in his own defence is irrelevant; the criterion is whether facts emerging at the trial prove breach of contract. If the facts do not warrant summary dismissal, the master must pay damages; see *Ridge* v. *Baldwin.*(4) The onus is on the defendants to prove that summary dismissal was justified: see *Savage* v. *British India Steam Navigation Co. Ltd.*(5)

Having stated the law, let me now turn to the facts of this case. The plaintiff was employed by the defendants as an estate conductor in Division II of the estate since 1960. On 5th January 1965 the assistant manager of the defendants reported to the manager of discrepancies between the lower grades net weights of latex from Division II of the estate and the weights at the main factory. Both the scales were later checked and found to be correct. The manager then wrote a letter dated 6th January, 1965 (hereinafter referred to as the "warning letter") to the plaintiff purporting to warn him against further carelessness and negligence in his duties. Since the case hinges on the warning letter, it is necessary to reproduce it. It reads as follows:—

"You have already been verbally warned in regard to your field latex which re-coagulated at the Factory on 29th December. There was no rain on this day and no reason for this pre-coagulation other than lack of attention on your part to ensure ammoniation is being properly carried out in the field and at reception station. There is now further cause to doubt your ability to carry out your duties in a responsible manner.

The following Lower Grades Wet Weights are recorded:—

	Your signed Crop Sheet	*Check weighed at Factory*
1st Jan. 1965	990 lbs.	730 lbs.
2nd Jan. 1965	1,038 lbs.	820 lbs.
3rd Jan. 1965	Sunday.	
4th Jan. 1965	826 lbs.	715 lbs.
5th Jan. 1965	776 lbs.	747 lbs.
	3,630 lbs.	3,012 lbs.

A difference of 618 lbs. in 4 days and would have been higher but for Mr. Comfort, (on my instructions) checking at your Reception Station and finding on 5th January that you adopt a most careless attitude in regard to weighing in of lower grades and have been failing to ensure that water in buckets is excluded.

I can assure you that further gross carelessness and and negligence of your duties is liable to result in your immediate dismissal".

The difference of 618 lbs. in four days was ascertained from the daily crop sheet and the factory records. These records are exhibited in court. The manager instructed his assistant manager to deliver the warning letter to the plaintiff and to ask him to sign the second copy in acknowledgment of receipt. The assistant manager testified that he handed the warning letter to the plaintiff and asked him to read it. When the plaintiff had done so, the assistant manager asked him if he understood it and the plaintiff answered in the affirmative. The plaintiff was then asked to acknowledge receipt of the warning letter on the second copy but he refused to do so. As against that, the plaintiff has told the court that he read the warning letter but did not understand its contents. He further said that he did not acknowledge receipt on the copy of the warning letter because the assistant manager did not give him a copy. He wanted to read and understand the letter and to check the figures and also to consult his friends and his union. He added that if he had signed the copy of the warning letter that would mean that he would have admitted having made a mistake. Dato' Seenivasagam on his behalf also submitted that as there was no acknowledgment clause in the said letter the plaintiff could not be expected to know that he was only required to acknowledge receipt of the warning letter. In my view, the contents of the warning letter are plain and expressed in a way that any reasonable estate conductor would be able to comprehend. I am satisfied and so find that the plaintiff knew what was contained in that letter. To superimpose an argument that by signing a copy of the warning letter the plaintiff, who claims to have been an estate conductor all his working life, would be admitting his mistake is, to say the least, a bit difficult for me to swallow. The result of that meeting was conveyed to the manager who instructed the assistant manager to write another letter to the plaintiff asking him to see the manager at his bungalow before 6.00 a.m. on 7th January, 1965. This second letter was duly handed to the plaintiff, but he failed to turn up as requested. His reason was that if he had gone to the bungalow the manager might have abused him. The plaintiff was again instructed by the manager to come to his office later that morning, but again he refused to comply. Later in the day, the manager asked his clerk to call the plaintiff to the office. He finally came at about 2.30 p.m. What took place between the two can be gauged from their respective evidence. According to the manager, when the plaintiff turned up he took the warning letter, asked him to read, sign a copy and return it to him. The plaintiff refused. On the other hand, the plaintiff has told this court that the manager did not show him the warning letter, but when

he asked him the reason for his refusal to sign the copy he replied that he could not understand the contents of the warning letter. The manager suspended the plaintiff's service on that same day. The plaintiff referred the matter to his union and at their request the union was informed by the defendants that the plaintiff was suspended for insubordination. From then onwards the plaintiff's case was placed in the hands of his solicitors. There were protracted negotiations between the solicitors and the defendants, and later between the union and the defendants. On 21st April, 1965 the defendants served the plaintiff with a written notice of dismissal for insubordination with effect from 8th January, 1965. The manager in his evidence said that he considered the incidents of 6th January, 1965 and 7th January, 1965 sufficient to render the plaintiff guilty of misconduct in his employment in that he disobeyed the lawful and reasonable orders of the defendants.

The question now is to ascertain the reasonable inference to be gathered from the incidents of 6th January, 1965 and 7th January, 1965. To repeat what plaintiff's counsel has speciously urged on his behalf, the only incident (which he submitted is trivial) is the refusal of the plaintiff to sign a copy of the warning letter in acknowledgment. The proposition is sound if the facts justify the inference. In such a case I will gladly accede to counsel's argument that that would be too trivial a matter to justify summary dismissal. In my view, to adopt counsel's argument would be to take the line of least resistance. With all due respect to counsel, I think he attached too much weight to the failure to sign the copy of the warning letter and not enough to the inference to be deduced from all the facts.

The plaintiff, as the estate conductor of his division, is responsible for proper estate management; some of his essential duties are to ensure that the field latex does not pre-coagulate at the factory. He is also required to show diligence in supervising the weighing of latex in the field and to ensure that buckets are free of water. Failure to do that would result in great discrepancies between the latex weighed in the field and at the factory. The warning letter purports to be a final warning to the plaintiff not to be grossly careless and negligent in his duties. In spite of repeated attempts by the defendants, the plaintiff contumaciously refused to acknowledge the said warning, thereby giving rise to the irresistible inference that he refused to mend his ways, that he is adamant against correction, that he refused to remedy an alleged wrong. This is not just a trivial case of ignoring to acknowledge a warning letter. It goes further than that. It goes to the essential conditions of his contract of service, that is, to be a responsible estate conductor. His whole conduct during those two days, if unchecked, might not only result in the low results of latex produced, which would be detrimental to the interests of the defendants, but what is more important is that it conveys the impression that that mutual confidence which is so essential to the relationship between master and servant has been violated. In these circumstances it is idle to say that the conduct of the defendants was arbitrary.

In the light of my findings on the issue of summary dismissal it would now be supererogatory to determine the question of proper notice.

The plaintiff's case is dismissed with costs.

Claim dismissed.

Solicitors: *S. Seenivasagam & Sons; Shearn, Delmore & Co.*

RE TAN SAW GAN DECD.; YEO CHOON HOOI v. YEO SEIW GNOH & ORS.

[O.C.J. (MacIntyre J.) July 21, 1967]

[Penang — Originating Summons No. 173 of 1966]

Will — Construction — Inconsistent clauses — Parts irreconcilable — Rule of interpretation — Intention of testator — Meaning of 'absolutely' in the context — Probate and Administration Ordinance, 1959, s. 69(3).

A testatrix died possessed of immovable property as well as movables including cash in the house and in the bank. Under certain clauses of her will she devised certain lands and bequeathed cash to certain persons and under a later clause 9 of the same will she devised all her immovable property and residue of her movables to her brother-in-law, the plaintiff herein, whom she appointed executor and trustee. The plaintiff was in doubt as to the intentions of the testatrix, whether or not she intended that he should be the sole legatee under the will in respect of all her immovable property devised to him in fee simple and also of the residue of her movable property bequeathed to him absolutely under clause 9 of her will. It was quite apparent that clause 9 was irreconcilable with the preceding clauses of the will.

An application was therefore, made by him as executor and trustee seeking an order to determine the effect of clause 9 upon the disposition of property provided under the other clauses of the will. The court was asked to determine:— (a) whether clause 9 operated to revoke or defeat the previous bequests contained in the preceding clauses; (b) whether clause 9 was to prevail over the other clauses in the will subsequent to and following after clause 9; (c) what was to become of the money left behind by the testatrix.

Held: (1) clause 9 did not operate to revoke or defeat the devises contained in the preceding clauses of the will;

(2) in this case since a gift to the trustee was not intended, the question of clause 9 prevailing over the subsequent clauses did not arise;

(3) since effect was being given to the preceding clauses in the will, the pecuniary legacies, funeral expenses and cost of tombstone should be met from the money she left behind before the residue implied in clause 9 could arise for disposition as therein laid down in that clause. This interpretation would be in accord